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# A HISTORICAL PERSPECTIVE ON MONTANA PROPERTY TAX: 25 YEARS OF STATEWIDE APPRAISAL AND APPEAL PRACTICE

Karen E. Powell\*

“Like the policeman in the *Pirates of Penzance* . . . the [Department of Revenue’s] lot in property tax appraisal is not a happy one. Hampered by inadequate staff and funds, its task of individual appraisal of properties is almost impossible in any annual revision. The legislature itself is strapped in providing staff and additional funds. Yet, if our conclusions here are properly drawn . . . property tax appraisals [in Area 2.1] are seriously out of whack.”<sup>1</sup>

## I. SUMMARY

This article examines the current property tax system in Montana, Montana’s use of a unique six-year reappraisal cycle, and Montana’s legal landscape in property tax. Additionally, this article explores the valuation methodology used to set Montana property tax values, statutes, and case law relating to reappraisal, and valuation for *ad valorem* property taxes. Finally, this article suggests advantages to shortening the current appraisal cycle.

## II. INTRODUCTION: MONTANA AND UNITED STATES PROPERTY TAX POLICY FRAMEWORK

Taxation of real property is a longstanding and historically stable funding mechanism for local and state governmental units across the United States, stemming from the time the Pilgrims landed at Plymouth Rock.<sup>2</sup> Most state and local jurisdictions utilize a one-year valuation cycle and appraise property on an annual or biennial basis.<sup>3</sup> In Montana, however, resi-

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1. *Mont. Dept. of Rev. v. Barron*, 799 P.2d 533, 537 (Mont. 1990).

2. Richard Henry Carlson, *A Brief History of Property Tax*, Fair & Eq. 3, 5 (Feb. 2005).

3. This is a result of jurisdictions using *ad valorem* property taxes as annual revenue. See e.g. International Association of Assessing Officers, *Property Assessment Valuation* 1, 4–7, 285–335 (2d ed., Intl. Assn. of Assessing Off. 1996). For an overview of assessment and tax deadlines for U.S. states, see generally *State Tax Handbook* (Timothy Bjur et al. eds., Com. Clearing H. 2006). For basic

dential, commercial, agricultural, and forest land properties are valued on a six-year cycle and any value increase is phased in over the six-year period.<sup>4</sup>

Because of an increasing number of land parcels, valuation volatility, and economic instability, it would now be proper to analyze Montana's unique reappraisal system and its effectiveness in the current climate. Under these conditions, the upswing and downswing of property values may not be properly captured when property is valued on a six-year cycle.

Shortening the reappraisal cycle may more accurately capture the economic fluctuations and rapid increases in parcel numbers in Montana.<sup>5</sup> In addition, shortening the reappraisal cycle would simplify the tax system for taxpayers and the judicial branch. Shortening the reappraisal cycle, however, may initially require additional resources for the Department of Revenue.

Property tax is a standard mechanism developed by state and local governments to provide funding for local infrastructure.<sup>6</sup> The property tax system has many advantages as a government funding mechanism. For example, property tax administered on a local level can provide funding independence for local jurisdictions. In addition, an active local voting population can control spending by supporting or opposing local mill<sup>7</sup> levies and electing local officials who support the taxpayers' spending positions. The ease of locating and tracking land and buildings for tax purposes, as well as enforcement of tax liens, makes implementation relatively simple.<sup>8</sup>

There are also policy and political downsides to a local property tax system. Property taxes are levied on a non-liquid asset (land and buildings), which may cause perceived and real problems for certain property owners.<sup>9</sup> Because property taxes are not directly tied to current income, seniors and others on a fixed income may have difficulty paying their taxes

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appraisal methodology, *see generally* Appraisal Institute, *The Appraisal of Real Estate* (Stephanie Shear-Joyce ed., 11th ed., Appraisal Inst. 1996).

4. Certain properties, including centrally assessed properties and certain industrial properties are valued on an annual basis and are not addressed in this article.

5. In June 2007, Montana had approximately 900,000 parcels. The Department of Revenue anticipates the number of parcels to grow to 985,000 by 2009. Rj Zimmer, *Surveyors Working to Improve GIS*, 4 Am. Surveyor 60, 1, 1 (June 2007); DOR estimation provided to 2007 Montana Legislature.

6. *See generally* Carlson, *supra* n. 2, at 3, 5; H. Clyde Reeves, *The Role of the State in Property Taxation* (H. Clyde Reeves & Scott Ellsworth eds., LexingtonBooks D.C. Heath and Co. 1983).

7. A mill is one-tenth of 1% and is used in referencing property tax rates. *Dictionary of Finance and Investment Terms* 1, 334 (John Downes & Jordan Elliot Goodman, eds., 4th ed., Barron's Educ. Series 1995).

8. Joan Youngman, *Legal Issues in Property Valuation and Taxation: Cases and Materials* 1-3 (Intl. Assn. Assessing Off. 1994).

9. NCSL Fiscal Affairs Program, *A Guide to Property Taxes* 1, 1 (Natl. Conf. St. Legis. 2002).

when the value of the real estate asset increases due to forces beyond the owner's control.<sup>10</sup>

Critics of the property tax also argue that taxing buildings and other improvements is a deterrent to economic growth.<sup>11</sup> While taxing land does not impact the quantity of available land (inelastic supply), taxing improvements can arguably influence the quantity of improvements by affecting decisions to build improvements. Because taxes increase when improvements are built, there is a disincentive to improve property, or so the critics argue.<sup>12</sup> For example, it is said that the mansard roof became especially popular in France during the reign of Louis Napoleon because certain types of property were taxed based on the number of floors below the roofline.<sup>13</sup> Property taxes were used to support the Royal Court and were extremely unpopular.<sup>14</sup> Francois Mansart (sometimes spelled Mansard), a French Baroque architect, is generally credited with designing buildings with a lowered roof height that could still be used as occupied space while keeping taxable property values to a minimum.<sup>15</sup>

### III. EVOLUTION OF MONTANA'S PROPERTY TAX SYSTEM

Montana's statewide reappraisal system, established by the 1972 Montana Constitution, is a unique system born from concerns about the equity of local appraisals.<sup>16</sup> The new Constitution provides for legislative tax policy directives and state oversight of property appraisals, instead of the previous county-by-county assessment system of the older 1889 Constitution, by directing that "[t]he state shall appraise, assess and equalize the valuation of all property which is to be taxed in the manner provided by law."<sup>17</sup>

Under the 1889 Montana Constitution, property was appraised by a locally elected county assessor in each of Montana's 56 counties, and real property was generally valued at less than full cash value.<sup>18</sup> Each county's Board of Equalization, composed of the county commissioners, had the au-

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10. Reeves, *supra* n. 6, at xii (a third party sets the value of the property tax and it is unpopular because it cannot be avoided); Youngman, *supra* n. 8, at 1–3 (taxes are levied on a non-liquid asset and collected in a visible manner).

11. David Robinson, *The Councilor's Toolkit #4*, [http://inord.laurentian.ca/4\\_04/Councillors%20Toolkit%204b.htm](http://inord.laurentian.ca/4_04/Councillors%20Toolkit%204b.htm) (Apr. 12, 2004).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. John F. Sullivan, *Real Property Tax Assessment in Montana*, 34 Mont. L. Rev. 300, 316 (1973).

17. *Id.* (quoting Mont. Const. art. VIII, § 3).

18. Jeff Martin, *A Brief History of Cyclical Reappraisal of Property in Montana: Prepared for the House Bill No. 488 Subcommittee of the Revenue and Transportation Interim Committee* 1, 1 (2008). See also Sullivan, *supra* n. 16, at 304, 305.

thority to hear appeals relating to the county assessments.<sup>19</sup> Valuation appeals could then be brought to the State Board of Equalization.<sup>20</sup> The State Board of Equalization was established by Article XII, Section 15 of the 1889 Montana Constitution.<sup>21</sup> The State Board acted as an assessing and administrative Board which developed a property tax system with little legislative oversight.<sup>22</sup>

Based on perceived inequities within the existing property tax assessment and appeal process, the 1972 Constitution directed the state to provide for appraisal, assessment, and equalization of property values for tax purposes.<sup>23</sup> The Constitution also required an independent local and state property tax appeal process.<sup>24</sup> These changes occurred at a time when home values across the country were rising at unprecedented rates.<sup>25</sup>

The 1972 Montana Constitution included some specific property tax policy concepts. Article VIII, Section 3 of the Constitution directs that “the state shall appraise, assess and equalize<sup>26</sup>. . . the valuation of all property which is to be taxed in the manner provided by law.”<sup>27</sup> Montana is one of only two states utilizing a statewide appraisal system instead of a local appraisal process.<sup>28</sup>

The 1975 Montana Legislature began to wrestle with the creation of a statewide appraisal and tax system that has since evolved.<sup>29</sup> The legislature created the first of six different reappraisal cycles that varied in length from three years to the current six-year cycle.<sup>30</sup> It also moved the appraisal process to the Department of Revenue, an executive branch agency with state employees located in all counties.<sup>31</sup>

19. Mont. Const. art. XII, § 15 (1889).

20. The Board of Equalization was the predecessor to the State Tax Appeal Board. The Department of Revenue was created in 1971, and took over administrative duties from the Board of Equalization which no longer existed. 1971 Mont. Laws 272; 1973 Mont. Laws 405. The State Tax Appeal Board took over the appellate functions of the Board of Equalization. *Mont. Dept. of Rev. v. Burlington N., Inc.*, 545 P.2d 1083, 1087 (Mont. 1976).

21. Mont. Const. art. XII, § 15 (1889).

22. Sullivan, *supra* n. 16, at 310; Martin, *supra* n. 18, at 1.

23. Mont. Const. art. VIII, § 3; *Albright v. Mont. Dept. of Rev.*, 933 P.2d 815, 824 (Mont. 1997).

24. Mont. Const. art. VIII, § 7.

25. *Guide to Property Taxes*, *supra* n. 9, at 1.

26. The Montana Constitutional requirement for equalization is discussed at length by the Court in *Albright v. Mont. Dept. of Rev.*, 933 P.2d 815 (Mont. 1997).

27. Mont. Const. art. VIII, § 3.

28. Maryland is the other state. Jeff Martin, *Review of Property Valuation in Selected States: Prepared for the Revenue and Transportation Interim Committee* 1, 1 (2008).

29. *Id.* at 2.

30. *See id.* for overview. *See also* 1975 Mont. Laws 571–572; 1981 Mont. Laws 588–589; July 1992 (Spec. Sess.) Mont. Laws 3574–3580; 1999 Mont. Laws 2734–2819.

31. 1975 Mont. Laws 571–572.

In 1975, the legislature set the first reappraisal cycle and directed the Department of Revenue to administer and supervise a program for revaluation of all taxable property within the state every five years.<sup>32</sup> At least 20% of the property in each county had to be revalued each year.<sup>33</sup> Property not reappraised for the longest period was to be appraised first.<sup>34</sup>

Taxpayers in Missoula County challenged this reappraisal plan.<sup>35</sup> In *Patterson v. Montana Department of Revenue*, individual taxpayers and a local taxpayer association filed suit against the Department of Revenue, its director, and the Missoula County assessor and alleged that the statewide Montana Appraisal Plan was unconstitutional.<sup>36</sup> The trial court granted an injunction.<sup>37</sup> Approximately 20 similar actions were filed across the state, with varying decisions by district courts.<sup>38</sup> Ultimately, the Montana Supreme Court upheld the constitutionality of the appraisal plan and implementing legislation, but determined that certain flaws existed in the adoption of the plan itself.<sup>39</sup>

Between 1977 and 1989, the Montana Legislature revised the classification and taxation of property and worked to refine the reappraisal process. The 1977 legislature adopted a system based on 100% of a property's market value with a lower tax rate.<sup>40</sup> The next reappraisal cycle began in 1979 and was extended to 1985 by the legislature.<sup>41</sup>

In the reappraisal cycle ending in 1985 the value of residential property increased by 121% statewide.<sup>42</sup> The legislature reduced the tax rate on industrial and commercial property, extended the reappraisal cycle by two years, and delayed implementation by a year.<sup>43</sup>

The 1987 legislature also directed the Department of Revenue to begin conducting statistically valid annual sales assessment ratio studies of all residential and commercial land and improvements.<sup>44</sup> Sales assessment ra-

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32. *Id.*

33. *Id.*

34. *Id.*; *Patterson v. Mont. Dept. of Rev.*, 557 P.2d 798, 802 (Mont. 1976) (the decision in *Patterson* was based on a statutory reappraisal plan that is substantially different than current law).

35. *Patterson*, 557 P.2d at 802.

36. *Id.* at 800.

37. *Id.*

38. *Id.*

39. *Id.*

40. 1977 Mont. Laws 1842–1886; *See also* Martin, *supra* n. 18, at 3.

41. 1981 Mont. Laws 588–589.

42. Martin, *supra* n. 18, at 5 (citing Montana Department of Revenue “Timeline of Reappraisal” from minutes dating June 21, 2007).

43. 1987 Mont. Laws 944–946.

44. Martin, *supra* n. 18, at 4. Sales ratio assessments are used by many jurisdictions to value large numbers of residential and commercial properties. The concept is widely accepted by courts and jurisdictions. For information on the general process, *see Property Assessment Valuation*, *supra* n. 3, at 304–335.

tio studies compare actual sales prices to appraised values and determine a ratio for valuation purposes. The 1989 legislature revised the stratified sales assessment ratio procedures and ordered that the Department of Revenue was to partition the State into as many as 100 areas of residential property, and as many as 20 of commercial property. The areas in each are to be separately studied. In 1990, the Montana Supreme Court noted:

Under the study, the *actual sales prices* of real property parcels sold for three taxable years prior to the study were compared with their *appraised values* then in effect, and a ratio determined. If the average appraised values of the properties in the study, compared to the average of the actual sales amounts were less than 95% or more than 105%, the assessments for each stratum within each area were to be rescaled to bring all ratios to the common value of one.<sup>45</sup>

In other words, properties with values set within 10% of an average value are moved closer to the average value.

Although the legislature supported the assessment ratio studies, taxpayers challenged its implementation.<sup>46</sup> In the 1990 case *Montana Department of Revenue v. Barron*, the Department of Revenue increased the valuation of Patricia Barron's home from \$28,019 to \$40,325 using a stratified sales assessment ratio.<sup>47</sup> Barron appealed on constitutional equity grounds.<sup>48</sup> The Montana Supreme Court held that the stratified sales ratio exacerbated any inequities in appraisal differences and that the methodology itself discriminated against properties appraised at or above market values.<sup>49</sup> Thus taxpayers appraised at or above market carried a disproportionate burden of the taxes in violation of equal protection and due process requirements of the Constitution.

In 1991, the legislature shortened the reappraisal cycle from five years to three and attempted to direct the Department of Revenue to develop and implement a stratified sales assessment ratio to value property.<sup>50</sup> Again, the Supreme Court rejected the sales assessment ratio approach.<sup>51</sup> In response, the Department of Revenue developed a new system for the reappraisal cycle that ran from 1987 to 1993. For the first time, the Department's appraisal plan used a Computer Assisted Mass Appraisal System (CAMAS) to assist the Department's appraisers in the valuation process.<sup>52</sup> The CAMAS

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45. *Barron*, 799 P.2d at 534 (emphasis in original).

46. See e.g. *id.* at 533.

47. *Id.* at 535.

48. *Id.*

49. *Id.* at 538.

50. 1991 Mont. Laws 680.

51. *Mont. Dept. of Rev. v. Sheehy*, 862 P.2d 1181, 1181–1183 (Mont. 1993).

52. *Montana Appraisal Manual* 1–1 to 1–2 (Cole-Layer Trumble Co. 2002) (the Montana Appraisal Manual is a reference tool developed by the Department of Revenue to assist its residential and commercial appraisers); see also *Albright*, 933 P.2d at 817.

system is “designed to help the Appraiser create and maintain records and procedures needed to arrive at a just, equitable, and defensible valuation for each parcel of real estate within [each] county” in the state.<sup>53</sup> In referencing the computer system, the Court has noted, “The CAMAS system functions in accordance with the Department’s appraisal plan by producing computer-assisted cost and market estimates of residential properties, cost and income estimates for commercial properties, and cost estimates for industrial properties.”<sup>54</sup>

In December 1993, a group of taxpayers challenged the Department’s appraisal process. In *Albright v. Montana Department of Revenue*, the Montana Supreme Court extensively described Montana’s appraisal practices and approved the use of the CAMAS system which is still in place today.<sup>55</sup> The reappraisal cycle beginning January 1, 1993, and ending January 1, 1996, resulted in a 40% increase in market values.<sup>56</sup> To mitigate the impact of this increase in values, the legislature approved a phase-in of the valuation changes for agricultural land, residential property, commercial property, and forest land.<sup>57</sup> Legislation also reduced the tax rate for commercial and residential property.<sup>58</sup>

In 1997, taxpayer Theodore Roosevelt IV challenged the Department’s phase-in of his Fergus County property value, arguing that he paid a disproportionate amount of property taxes.<sup>59</sup> Roosevelt’s property had declined in value since the prior assessment.<sup>60</sup> Instead of assessing on the lower value, the Department phased in the declining value over the reappraisal cycle.<sup>61</sup> The Montana Supreme Court agreed with Roosevelt and held that a phase-in for declining values was unconstitutional and violated the equal protection clause of the Montana Constitution because certain taxpayers would pay a disproportionate share of the state’s property tax.<sup>62</sup>

In 1999, the legislature again significantly revised Montana’s property tax system.<sup>63</sup> The legislature reduced the tax rate for residential, commercial, agricultural, and forest land, increased the market value exemptions for residential and commercial property, and phased in the remaining valuation

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53. *Albright*, 933 P.2d at 817 (quoting Department of Revenue Appraisal Manual).

54. *Id.* at 818.

55. *Id.* at 815.

56. Martin, *supra* n. 18, at 5–6 (citing Montana Department of Revenue “Timeline of Reappraisal” from minutes dating June 21, 2007).

57. 1997 Mont. Laws 2284.

58. *Id.*

59. *Roosevelt v. Mont. Dept. of Rev.*, 975 P.2d 295, 297–298 (Mont. 1999).

60. *Id.* at 297.

61. *Id.*

62. *Id.* at 304.

63. 1999 Mont. Laws 2708–2728.



increases over a four-year period.<sup>64</sup> Other adjustments were also made to the property tax system including changes to value caps, property tax limitations, tax rates, and mill calculations. The reappraisal cycle was extended from three years to six years.<sup>65</sup>

The 2003 legislature made few changes to the reappraisal system. Certain additional mitigation strategies were refined. For example, the legislature created an “extended property tax assistance program” to address extraordinary market value increases during the revaluation cycle ending in December 2002.<sup>66</sup> The program provided a tax cap for certain residential dwellings and appurtenant land not exceeding five acres that had a taxable value increase of 24% or more due to reappraisal, when property owners met certain income levels.<sup>67</sup>

While the reappraisal cycles have stabilized with the use of the CAMAS system and mitigation strategies, there is still significant potential for some extreme property valuation increases to occur at the same time that incomes are stagnant. Historically, the reappraisal system created a large number of tax appeals in years when property taxes rose at a faster rate than income.<sup>68</sup> Recently, the number of appeals has been lower, which may be due to the relative economic stability in Montana. There is some concern, however, that changing economics in the current cycle (high valuation increases at the beginning of the cycle and a flattening of values at the time of implementation) will create conditions similar to the 1986 reappraisal cycle.<sup>69</sup> If so, there will be many tax appeals which can be considered a surrogate measure for property owners’ concern with property taxes.

#### IV. CURRENT REAPPRAISAL PROCESS IN MONTANA

The Montana Department of Revenue is responsible for determining the value of all property in the state. By statute, the Montana Department of Revenue is required to classify and appraise all taxable land in Montana in a uniform and equitable manner.<sup>70</sup> The Department of Revenue is charged with valuing property at 100% of market value, unless otherwise directed by law, such as valuation of agricultural property which is based on

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64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. The County Tax Appeal Boards received 28,192 appeals for the reappraisal cycle beginning in 1986, compared to 4,958 for the cycle beginning in 1993, 1171 for the cycle beginning in 1996, and 480 for the cycle beginning 2003. Data collected by the State Tax Appeal Board, on file with the *Montana Law Review*.

69. *Id.*

70. Mont. Const. art. VIII, § 3; Mont. Code Ann. §§ 15-7-101, 15-7-103 (2007).

production yield.<sup>71</sup> Market value is “the value at which property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.”<sup>72</sup> The Department of Revenue may not adopt a lower or different standard other than market value.<sup>73</sup>

Pursuant to Montana Code Annotated Section 15–7–111, the Department of Revenue is charged with the administration and supervision of a program for periodic revaluation of taxable property within Montana for *ad valorem* tax purposes.<sup>74</sup> As part of its system, the Department of Revenue adopted a comprehensive appraisal plan which reappraises all property every six years and phases in any increase in value.<sup>75</sup> Residential, commercial, forestland, and agricultural property reappraisal will be effective as of January 1, 2009.<sup>76</sup> Properties will be assessed using the new appraisal values as of January 1, 2009.<sup>77</sup> It is very likely the new values will be phased in over the next six-year period.

#### A. *Calculating Market Value for Appraisal Purposes*

All real property in Montana is classified by its use. Residential and commercial property is classified as class-four property and is valued at market value.<sup>78</sup> Agricultural property is classified as class-three property and is valued based on production.<sup>79</sup>

The Department is required to classify and appraise all taxable land in Montana in a uniform and equitable manner.<sup>80</sup> The Department keeps individual property tax records for all property in the state, which include a description, owner, and the assessed value of the real property and any improvements.<sup>81</sup>

Typical information is collected by each appraiser when appraising residential and commercial property. The appraiser examines and collects information on physical characteristics such as square footage, number of bedrooms, garage, or other information.<sup>82</sup> If the property is income-gener-

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71. *Id.* at § 15–8–111.

72. *Id.* at § 15–8–111(2); *Mont. Dept. of Rev. v. Countryside Village*, 667 P.2d 936, 937 (Mont. 1983).

73. Mont. Code Ann. § 15–8–111(3).

74. *Id.* at § 15–7–111.

75. Admin. R. Mont. 42.20.101–42.20.124 (2008).

76. Mont. Code Ann. § 15–7–111(3); Admin R. Mont. 42.20.101–124.

77. Admin. R. Mont. 42.20.101–42.20.124.

78. Mont. Code Ann. §§ 15–6–134, 15–8–111(7)(d).

79. *Id.* at § 15–6–133.

80. Mont. Const. art. VIII, § 3; Mont. Code Ann. §§ 15–7–101, 15–7–103.

81. Mont. Code Ann. § 15–8–701.

82. This is the type of material collected by any residential appraiser. See generally *The Appraisal of Real Estate*, *supra* n. 3, at ch. 8.

ating, such as an apartment building, information on rents and other income is included.<sup>83</sup> The property information is stored on the mass appraisal computer system located in the Department.<sup>84</sup>

The Department currently uses three standard methods of appraisal: the cost approach, the market data approach, and the income approach.<sup>85</sup> For the valuation of residential property, CAMAS (now ORION)<sup>86</sup> produces both a market value estimate and a cost estimate. The Department of Revenue's market value estimate is produced by averaging comparable sales values based on data from the Realty Transfer Certificates.<sup>87</sup>

When there is an insufficient number of comparable sales to create a market value estimate, residential property is appraised by the cost approach.<sup>88</sup> The CAMAS cost estimate is produced by estimating the cost of replacing or reproducing the residential structure, deducting a depreciation value from this cost, and adding the underlying land value.<sup>89</sup> When valuing commercial property, CAMAS produces a cost estimate, and, in some instances, an income estimate.

### B. Sales Comparison Approach

The Department may not adopt a lower or different standard of market value than "the value at which property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."<sup>90</sup> This is also considered the "most probable price . . . for which the appraised property will sell in a competitive market."<sup>91</sup>

The sales comparison method is the most commonly used method for appraising residential property in Montana.<sup>92</sup> The sales comparison approach compares the subject property to similar properties recently sold in

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83. *Id.* at ch. 20.

84. See generally *Montana Appraisal Manual*, *supra* n. 52.

85. *Albright*, 933 P.2d at 817.

86. The ORION system was implemented in 2008. *Biennial Report*, Department of Revenue, [http://mt.gov/revenue/publicationsreports/biennialreports/Corrected\\_2007-2008\\_Biennial\\_Report.pdf](http://mt.gov/revenue/publicationsreports/biennialreports/Corrected_2007-2008_Biennial_Report.pdf) (Jan. 13, 2009). The underlying data and methodologies are the same as the CAMAS system, while the property record card, CALP, and some reports have a different look. *Albright*, 933 P.2d at 818.

87. Mont. Code Ann. § 15-7-302. For an expanded discussion of the process, see *Albright*, 933 P.2d at 817. The process is generally set forth in the Department of Revenue administrative rules and the *Montana Appraisal Manual*.

88. *Albright*, 933 P.2d at 817.

89. *Id.*

90. Mont. Code Ann. § 15-8-111(2)(a); *Countryside Village*, 667 P.2d at 937; *DeVoe v. Dept. of Rev. of Mont.*, 866 P.2d 228, 235 (Mont. 1993).

91. *Trustees of Wash.-Idaho-Mont. Carpenters-Employers Ret. Trust Fund v. Galleria Partn.*, 819 P.2d 158, 161 (Mont. 1991).

92. Mont. Code Ann. § 15-8-111.

the neighborhood of the subject property.<sup>93</sup> Adjustments in the value of the improvements may be made to reflect different aspects of the property, such as the presence of a garage, the number of bedrooms, and other factors.<sup>94</sup> The value of the land is determined by a computer-assisted land-pricing model which sets values for land by area or neighborhood.<sup>95</sup>

The Department of Revenue utilizes comparable sales data to calculate property values. In 1975, the Montana Legislature enacted the Realty Transfer Certificate Act.<sup>96</sup> The purpose of the legislation was “to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method.”<sup>97</sup> The gathering of this information allows the Department of Revenue to utilize a sales comparison method for valuation.<sup>98</sup>

Realty Transfer Certificates (RTCs) are filed every time a transfer of property is recorded in Montana.<sup>99</sup> An RTC includes the buyers, sellers, location, and price of the property.<sup>100</sup> RTCs are, however, deemed confidential information.<sup>101</sup> The Department of Revenue receives and utilizes RTCs to determine the market value of property in Montana.<sup>102</sup> RTCs for property transfers that are not arms-length transactions are not entered into the mass appraisal database.<sup>103</sup>

An example illustrates a basic tax appeal situation for a property valued using the sales comparison method. A resident taxpayer appeals the valuation of her house because she claims the value is too high. At the hearing, the Department of Revenue introduces evidence showing the sales price of six houses similar to the taxpayer’s, all of which occurred in the past three years in the taxpayer’s neighborhood. The six comparable sales are adjusted for the taxpayer’s single-car garage. The sales prices of the comparable sales are within a few thousand dollars of the appraised value of the taxpayer’s property. In this situation, if the taxpayer cannot demonstrate error on the part of the Department of Revenue her claim will fail.

93. *Montana Appraisal Manual*, *supra* n. 52, at 1–2.

94. The Department has the right to enter private property for appraisal purposes. Mont. Code Ann. § 15–7–139(2). If a landowner wants to be present, the landowner must comply with the requirements of Mont. Code Ann. § 15–7–139.

95. *Albright*, 933 P.2d at 817; *O’Neill v. Mont. Dept. of Rev.*, 49 P.3d 43, 46 (Mont. 2002). See also *Montana Appraisal Manual*, *supra* n. 52, at 1–2.

96. 1975 Mont. Laws 528 (codified at Mont. Code Ann. §§ 15–7–301 to 15–7–311).

97. Mont. Code Ann. § 15–7–302.

98. *Id.*; See also Admin. R. Mont. 42.20.201–42.20.205.

99. Mont. Code Ann. § 15–7–305.

100. Admin. R. Mont. 42.20.202. The RTC is available on the Department of Revenue website at <http://mt.gov/revenue/formsandresources/forms.asp#property> (last accessed Jan. 2009).

101. Mont. Code Ann. §§ 15–7–305, 15–7–308.

102. *Id.* at § 15–7–302; Admin. R. Mont. 42.20.201.

103. Mont. Code Ann. § 15–7–307; Admin. R. Mont. 42.20.203.

While there is a presumption that the Department's determination is correct,<sup>104</sup> the Department must take into consideration the sales price<sup>105</sup> of a subject property as well as independent appraisals when such information is available.<sup>106</sup>

### C. Cost Approach to Valuation

The cost approach is generally used for residential property when comparable sales data is unavailable due to the uniqueness of the subject property or a lack of sales of comparable properties in the area. The cost approach is a determination of the current replacement cost of improvements, less depreciation, plus the land value.<sup>107</sup> The CAMAS system can uniformly determine the cost approach to valuation. CAMAS applies the cost approach by determining the value of the underlying land, according to a computer-assisted land-pricing (CALP) estimation,<sup>108</sup> and adding to that value the replacement cost of the improvements, minus depreciation as determined by Marshall and Swift Valuation Service or other depreciation schedules.<sup>109</sup> By statute, the Department of Revenue must "fully consider" a reduction in value for depreciation, including any physical, functional, or economic obsolescence.<sup>110</sup> Construction costs alone, however, are insufficient to determine valuation, without considering market factors.<sup>111</sup>

When the cost approach is used for both residential and commercial property, the Department may adjust property values based on an "Economic Condition Factor" (ECF).<sup>112</sup> An ECF is defined by the Department's CAMAS user manual as "extraordinary economic obsolescence that impacts all property located in a specific neighborhood, community, or geographic area."<sup>113</sup> According to the CAMAS manual, "the Economic Condition Factor attempts to correct for the difference between replacement cost less normal depreciation and market value as they may differ from locality to locality."<sup>114</sup>

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104. *Burlington N. Inc.*, 545 P.2d 1083.

105. Admin. R. Mont. 42.20.454.

106. *Id.* at 42.20.455.

107. See generally *Appraisal of Real Estate*, *supra* n. 3. See also *Montana Appraisal Manual*, *supra* n. 52, at 2–5. For additional discussion of elements of the cost approach, see *Albright*, 933 P.2d at 817–820.

108. *Montana Appraisal Manual*, *supra* n. 52, at 1–2.

109. *Id.* at 2–5. See also *Mont. Dept. of Rev. v. St. Tax App. Bd.*, 613 P.2d 691 (Mont. 1980) (discussing the Department's use of Marshall and Swift manuals for appraising commercial properties).

110. Mont. Code Ann. § 15–8–111(2)(b); see also *Albright*, 933 P.2d at 822.

111. See e.g. *DeVoe*, 866 P.2d at 235; *Albright*, 933 P.2d at 822.

112. *Montana Appraisal Manual*, *supra* n. 52, at 32–16.

113. *Id.*; see also *Albright*, 933 P.2d at 819.

114. *Albright*, 933 P.2d at 819.

The purpose of the ECF is to adjust the cost approach to valuation to take local market influences into account, such as a depressed or unusually active market.<sup>115</sup> For example, if a new residence is constructed in an economically depressed area, the cost of the new construction may exceed the sales price. Valuing this new residence with an unadjusted cost approach would create a significant disparity from market appraisals and would frustrate the goal of equalization. Although the Supreme Court has approved the use of the ECF, the State Tax Appeal Board has rejected its use in certain cases.<sup>116</sup>

#### *D. Income Approach*

The income approach is the preferred method for valuing certain commercial properties when income and expenses can be compared to determine a property value.<sup>117</sup> This approach capitalizes net operating income into a value using a capitalization rate.<sup>118</sup> To begin income valuation of commercial property, the Department of Revenue sends an income and expense questionnaire to commercial property owners for them to complete and return.<sup>119</sup> The information on these statements is reviewed and entered into the CAMAS system.<sup>120</sup> The information is then sorted, correlated, and generated into a commercial income model.<sup>121</sup> Such models may only be created, however, in areas where sufficient income and expense data has been collected. Because commercial property owners are not required to provide such information to the Department of Revenue, the use of the income approach to commercial property valuation in Montana is limited.

#### *E. Special Considerations for Class-Four Properties in Reappraisal*

Several special considerations apply to valuation of certain properties. For example, a public use restriction, such as a zoning regulation or other legal limitation on the land, must be considered in determining the property's market value.<sup>122</sup>

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115. *Id.* at 823.

116. *Pilgeram v. Mont. Dept. of Rev.*, 1997 Mont. Tax LEXIS 5 (St. Tax App. Bd. 1997); *Gessaman v. Mont. Dept. of Rev.*, 1997 Mont. Tax LEXIS 19 (St. Tax App. Bd. 1997); *Gessaman v. Mont. Dept. of Rev.*, 1999 Mont. Tax LEXIS 19 (St. Tax App. Bd. 1999).

117. Admin. R. Mont. 42.20.107.

118. *Id.* at 42.20.108–42.20.109.

119. *Id.* at 42.18.113. See also *Montana Appraisal Manual*, *supra* n. 52, at 2–8 to 2–13.

120. Admin. R. Mont. 42.18.113.

121. *Id.*

122. See e.g. *Mont. Dept. of Rev. v. Grouse Mountain*, 707 P.2d 1113, 1116 (Mont. 1985) (valuing a golf course with restrictions on use); *DeVoe v. Missoula Co.*, 759 P.2d 991, 994 (Mont. 1988); *Kalispell Assoc. Lmt. v. Mont. Dept. of Rev.*, 1997 Mont. Dist. LEXIS 438 (1st Jud. Dist. Ct. Mont. 1997).

A taxpayer with a residential property in a “changing use” area may file an application with the Department of Revenue for continued appraisal as a residential property instead of as a commercial or industrial property.<sup>123</sup> Rollback taxes may apply if the property is changed to industrial or commercial use.<sup>124</sup>

Manufactured homes,<sup>125</sup> mobile homes, condominiums,<sup>126</sup> landfills,<sup>127</sup> and certain other specialized properties have particular valuation issues. Industrial-type property may consist of property in multiple classifications for tax purposes. Thus certain types of property on an industrial site may be valued using different methodologies and ultimately combined for tax purposes. For example, land and general commercial buildings may be valued as class-four properties while pollution control improvements, silos, or other specialty items may be classified and valued differently for tax purposes.

### F. Formula Calculating Property Tax

Unfortunately, analyzing the actual calculations to determine the property taxes for a specific property in Montana is not a transparent project. Residential and commercial property tax is not determined solely by the property’s value, although the value is the starting place for the property tax calculation.<sup>128</sup> The formula for calculating residential and commercial property tax is to multiply the general tax rate for class-four property by the market value of property after applying the homestead (or comstead) exemption and the value phase-in. The product is then multiplied by all applicable mill levies.<sup>129</sup>

123. Mont. Code Ann. § 15-7-401.

124. *Id.* at §§ 15-7-401, 15-7-402.

125. A manufactured or mobile home is subject to differing taxation based on whether the structure is permanently affixed to real property. A “mobile home” includes a trailer, house trailer, or trailer coach exceeding 8 feet in width or 45 feet in length that is designed to be moved from place to place under independent power or used as a residence. *Id.* at § 15-1-101(1)(m). A “manufactured home” is one that is built in a factory according to certain standards. *Id.* at § 15-24-201. A manufactured home must be considered as an improvement to real property for tax purposes if the running gear is removed, it is attached to a permanent foundation, and the taxpayer either owns the land or has permission to place the home at that location. *Id.* at § 15-1-101(1)(i); Admin. R. Mont. 42.20.117(5). A mobile home or manufactured home that is not permanently affixed to real property will be taxed as personal property. Mont. Code Ann. § 15-24-202.

126. *Id.* at §§ 15-8-511, 15-8-512.

127. Certain specialized properties, such as for-profit landfills, may require expert appraisers to properly value property. *Ostergren v. Mont. Dept. of Rev.*, 85 P.3d 738 (Mont. 2004).

128. Mont. Code Ann. §§ 15-6-134, 15-10-305.

129. A mill is a monetary unit that equals one tenth of a cent. *Dictionary of Finance and Investment Terms supra* n. 7, at 334. That is the equivalent of a \$1 tax on every \$1,000 of a property’s taxable value. For example, if a town’s tax rate is 5 mills per dollar of assessed/appraised value, and the assessed value is \$100,000, the tax is \$500 (0.005 times \$100,000). Tax levies are set in mills, tenths of

## V. MITIGATION STRATEGIES TO LESSEN IMPACTS OF LARGE VALUATION INCREASES

Property tax relief policy decisions can shift the property tax burden in many directions, including eliminating payment for certain classes of people or limiting the ability of local governments to raise tax revenue.<sup>130</sup> Montana legislators have long instituted a variety of property tax relief systems, such as allowing non-profit corporations certain tax exemptions.<sup>131</sup> Since the implementation of reappraisal, Montana has used property tax mitigation strategies for specific subsets of the population, including those with the biggest tax increases and low-income seniors.<sup>132</sup> The legislature often changes mitigation strategies during reappraisal years when economic trends shift property valuation.

### A. *How Property Tax Payments Affect Montana Households*

In 2008, the majority of Montana households had a combined income of \$20,000 to \$100,000 and paid 2.1% to 3.4% of their annual income to property tax.<sup>133</sup> Data collected from 2008 tax rebates indicates that, on average, households with higher income pay a lower percentage of their income in property tax on their primary residence.<sup>134</sup> For example, homeowners with incomes less than \$10,000 pay an average of more than 21% of their income to property taxes.<sup>135</sup> By contrast, homeowners with income greater than \$200,000 pay less than 1% of their income to property taxes. Households with higher income do generally have more expensive homes; however, home values are not proportional to income.<sup>136</sup>

### B. *Montana-Specific Tax Breaks*

Because of the effect of the six-year reappraisal cycle on taxpayers, the legislature has provided certain mitigation strategies (other than the home-

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mills, and hundredths of mills. Mont. Code Ann. § 15-10-201. Mill levies are generally set on a local level through the election process and are set based on the local budget. *Id.* at §§ 15-10-101 to 15-10-425. There is a cap on most mill levies. *Id.* at § 15-10-420. Certain statewide mills provide school equalization and funding for the university system. *Id.* at § 15-10-107. Special fees levied against property, such as sewer service, fire service, and garbage service, are added to the general property tax. *See e.g. id.* at § 15-16-101(2).

130. *A Guide to Property Taxes*, *supra* n. 9, at 1.

131. *See e.g.* Mont. Const. art. XIII, § 5.

132. *See e.g.* Mont. Code Ann. §§ 15-6-193, 15-31-171 to 15-31-179.

133. Memo. from Dan Dodds & Mary Craigle, Tax Policy Analysts, to Revenue and Transportation Interim Committee, *Household Income and Property Tax on Primary Residences* (Apr. 17, 2008) (copy on file with *Montana Law Review*).

134. *Id.*

135. *Id.*

136. *Id.*



stead/comstead exemptions and the phase-in of property taxes). Generally, these strategies are similar to those seen in other states.<sup>137</sup> Three strategies are used to mitigate the impacts of reappraisal on all Montana taxpayers. First, Montana's annual growth of property tax revenue collected from existing property is limited to half the average rate of inflation for the past three years.<sup>138</sup> This cap does not apply to new property and mill levies. Second, the legislature phases in the property valuation when property is reappraised, with an exemption for a portion of the property.<sup>139</sup> Finally, there are a series of mitigation strategies designed to assist fixed-income taxpayers such as seniors and veterans in paying any property taxes owed.<sup>140</sup>

### C. Phase-In and Exemptions

As part of a mitigation strategy, the reappraisal values are phased in over the six-year appraisal cycle.<sup>141</sup> The Montana Legislature has set a 16.66% per year phase-in value.<sup>142</sup> If the valuation decreases, the lower valuation will be immediately applied.<sup>143</sup> The legislature has set a blanket exemption for a percentage of the value of residential and commercial property. This exemption is generally referred to as the comstead or homestead exemption, and is phased in over reappraisal.<sup>144</sup> The homestead exemption exempts 34% of residential property value from taxation for 2008 and subsequent years.<sup>145</sup> For commercial properties, there is a comstead exemption of 15% for 2008 and subsequent years.<sup>146</sup> A mobile home may qualify for an exemption if it is permanently attached to a foundation.<sup>147</sup>

### D. Extended Property Tax Assistance Program

The extended property tax assistance program is designed to mitigate extraordinary market value increases during the previous reappraisal cycle

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137. For an overview of state mitigation strategies, see *A Guide to Property Taxes*, *supra* n. 9, at 1.

138. Mont. Code Ann. § 15-10-420.

139. *Id.* at § 15-6-222.

140. *Id.* at §§ 15-30-171 to 15-30-179, 15-6-211.

141. Admin. R. Mont. 40.20.503.

142. *Id.*

143. *Roosevelt*, 975 P.2d 295.

144. Mont. Code Ann. § 15-6-222.

145. A mobile home may qualify for an exemption if it is permanently attached to a foundation. Admin. R. Mont. 42.20.117(5)(b).

146. For rules regarding mixed use properties see Admin. R. Mont. 42.20.517.

147. *Id.* at 42.21.112.

for qualifying low-income individuals.<sup>148</sup> To qualify, an applicant must meet certain criteria, including an increase in taxable value of the property of more than 30%.<sup>149</sup> Additionally, total household income must not exceed \$75,000.<sup>150</sup> Lower income households can qualify for an adjusted tax rate.<sup>151</sup>

### *E. Individual Mitigation*

Since the institution of reappraisal cycles, the Montana legislature has implemented mitigation strategies for certain classes of taxpayers.

Montana's Elderly Homeowner/Renter Credit is available as a state income tax credit.<sup>152</sup> Households with a gross income of less than \$35,000 may receive the full income tax credit.<sup>153</sup> Households with a gross income between \$35,000 and \$45,000 may receive a reduced income tax credit.<sup>154</sup>

The Property Tax Assistance Program (PTAP) program reduces the taxable valuation for qualifying applicants' property and is applied to the first \$100,000 (or less) of taxable market value of the residence and appurtenant land that does not exceed five acres.<sup>155</sup> There is no age requirement to qualify for this program, but the income of the applicant(s) cannot exceed \$18,801 for an individual or \$25,068 for a married couple or head of household.<sup>156</sup> The property tax assistance program includes trailers, manufactured homes, and mobile homes.<sup>157</sup> All qualifying residences must be occupied for at least seven months a year as a primary residence.<sup>158</sup>

A residence and appurtenant land not exceeding five acres that is owned and occupied by a veteran or a veteran's spouse is exempt from a portion of taxation when the veteran is 100% disabled, honorably dis-

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148. An applicant must file an annual application with the Department of Revenue before April 15 for consideration for that tax year and documentation of income will be required. Mont. Code Ann. § 15-6-193. See Admin. R. Mont. 42.19.406 for updated rules and requirements for filing.

149. *Id.*

150. *Id.*

151. *Id.*

152. Qualifying persons are eligible to receive relief from property taxes through the elderly homeowner/renter program. Mont. Code Ann. §§ 15-30-171 to 15-30-179. Older Montanans may qualify if they are homeowners who have paid property taxes on their dwelling or if they are renters (credit is calculated on a "rent equivalency"). *Id.* at § 15-30-176. To be eligible, an applicant must be 62 or older, have resided in Montana for at least 9 months, occupied at least one dwelling for at least 6 months as an owner, renter or lessee, and have less than \$45,000 of gross household income. *Id.* at § 15-30-172.

153. *Id.* at §§ 15-30-172, 15-30-176.

154. *Id.* at § 15-30-176(4).

155. The application must be filed with the local Department of Revenue Office by March 15. Mont. Code Ann. § 15-6-134; Admin. R. Mont. 40.20.102.

156. Income is adjusted each year for inflation. Mont. Code Ann. § 15-6-134(20)(b)(ii).

157. *Id.* at § 15-6-134(c).

158. *Id.*

charged, and earning income at a level low enough to qualify for partial or total exemption from property taxes.<sup>159</sup> Income levels are adjusted yearly for inflation.<sup>160</sup> A surviving spouse of a 100% disabled veteran or a veteran who died in active duty may also be eligible for property tax relief.<sup>161</sup>

## VI. AGRICULTURAL LAND AND FOREST LAND VALUE BASED ON PRODUCTION

Both agricultural land and forest land are valued based on productivity rather than on market values.

### A. *Agricultural Land*

The Montana Legislature has directed that agricultural land be valued for its production capabilities and not based on urban growth or speculation.<sup>162</sup> Agricultural land is classified as class-three property pursuant to Montana Code Annotated Section 15-6-133 and is subject to cyclical reappraisal.<sup>163</sup>

Classifications of agricultural land include irrigated use, non-irrigated use (continuously cropped and summer fallow), and grazing use.<sup>164</sup> Within each class, there are sub-classifications by production categories as set forth by statute and rule.<sup>165</sup> Growing timber may not be classified as an agricultural use, but instead is governed by Title 15, Chapter 44 of the Montana Code Annotated.<sup>166</sup> Property used for residential, recreational, or commercial property cannot be classified as agricultural land.<sup>167</sup>

Land is initially eligible for agricultural valuation based upon its acreage. Contiguous parcels larger than 160 acres owned by a single entity are eligible for classification as agricultural land if none of the land is used for residential, commercial, or industrial purposes.<sup>168</sup> Contiguous parcels greater than 20 acres but less than 160 acres under one ownership that are actively devoted to agricultural use and used primarily for raising and marketing agricultural products may be classified as agricultural.<sup>169</sup> Those

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159. *Id.* at § 15-6-211.

160. *Id.*; Admin. R. Mont. 42.19.501, 42.19.503. The filing deadline is April 15 for a particular tax year, and applications should be sent to the local Department of Revenue office. For specific filing requirements, *see* Admin. R. Mont. 42.19.501.

161. Mont. Code Ann. § 15-6-211.

162. *Id.* at § 15-7-201.

163. *Id.* at §§ 15-7-111, 15-6-133.

164. *Id.* at § 15-7-201(2).

165. *See e.g. id.* at § 15-7-201(3).

166. *Id.* at § 15-7-202(8).

167. Mont. Code Ann. §§ 15-7-202(1)(a), 15-7-202(1)(b)(ii)(B).

168. *Id.* at § 15-7-202(1)(a).

169. *Id.* at § 15-7-202(b)(i); Admin. R. Mont. 42.20.625.

smaller parcels of land may be classified as agricultural upon application to the Department.<sup>170</sup> Some non-contiguous parcels may meet the income requirement in certain situations, such as when the parcel is part of a family-owned operation and is located within 15 air miles of the family operation.<sup>171</sup>

Contiguous or non-contiguous land parcels less than 20 acres under single ownership may be classified as agricultural if a producer markets at least \$1,500 in annual gross income.<sup>172</sup> Land that does not qualify for agricultural use is generally classified as nonqualified agricultural land or class-four property.<sup>173</sup>

### *B. Forest Land*

Forest land is taxed as class-ten property.<sup>174</sup> Valuation of class-ten forest land is based on 100% of the forest productivity of the land.<sup>175</sup> The method used to value forest land is set forth in Montana Code Annotated Section 15-44-103 and associated administrative rules.<sup>176</sup>

Forest land is defined as:

contiguous land of 15 acres or more in a single ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land: (a) that has not been converted to another use; and (b) on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment.<sup>177</sup>

Standing timber is exempt from taxation.<sup>178</sup>

## VII. ASSESSMENT NOTICE AND APPEAL PROCESS

The Department of Revenue sets values for property taxes while local counties bill, collect, and reconcile taxes.<sup>179</sup> The procedure for assessment and collection is generally set forth in law and is discussed below.

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170. Mont. Code Ann. § 15-7-202(7); Admin. R. Mont. 42.20.615.

171. Mont. Code Ann. § 15-7-202(1)(b)(ii).

172. *Id.* at § 15-7-202(2); Admin. R. Mont. 42.20.620.

173. Mont. Code Ann. §§ 15-6-133(1)(c), 15-24-1402, 15-7-202(1).

174. *Id.* at §§ 15-6-143, 15-44-102.

175. *Id.* at §§ 15-8-111(7), 15-44-103.

176. Admin. R. Mont. 42.20.701.

177. Mont. Code Ann. § 15-44-102(5).

178. *Id.* at §§ 15-6-223, 15-44-102.

179. *Id.* at §§ 15-7-101, 15-7-138, 15-16-101, 15-7-140.

*A. Process for Property Owners to Receive an Appraisal Notice  
From the Department of Revenue*

The Department of Revenue is required to maintain a property tax record for all property in Montana.<sup>180</sup> The Property Record Card serves as the property tax record and identifies the owner of a property, the property's legal description, the assessed value, and other information.<sup>181</sup> Assessed value is listed as both a land value and a value for the improvements on a property.<sup>182</sup> Improvements include standing structures such as buildings and fences.<sup>183</sup> After assessment, the Department of Revenue must certify the taxable value of all properties located within the boundaries of each taxing jurisdiction or school district.<sup>184</sup> This valuation is annually submitted to the county clerk and recorder and the county treasurer.<sup>185</sup>

An appraisal notice is sent to property owners upon a change in property valuation and additionally in a reappraisal year when all class-three, class-four, and class-ten property owners get an assessment notice.<sup>186</sup> The purpose of an assessment notice is to advise a property owner of any changes in value for a particular piece of property.<sup>187</sup> The notice includes classification, appraisal value, and any changes from a prior year.<sup>188</sup> Receipt of the document triggers the timelines for an appeal.<sup>189</sup> Taxes must always be paid under protest to perfect appeal rights.<sup>190</sup>

*B. After Department of Revenue Valuation:  
Reviewing an Appraisal Notice*

An application for reduction in value must be submitted to the county clerk and recorder on or before the first Monday in June, 30 days after receiving a classification or appraisal notice, or 30 days after an informal appeal was filed.<sup>191</sup> An informal appeal is filed with the Department of Revenue and extends the deadline for filing a formal appeal.<sup>192</sup> Formal

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180. *Id.* at § 15-8-701.

181. *Id.* at § 15-8-701(2).

182. *Id.* at § 15-8-701(2)(d)-(e).

183. Mont. Code Ann. § 15-1-101(1)(i).

184. *Id.* at §§ 15-10-202, 15-10-305.

185. *Id.* at § 15-10-305.

186. *Id.* at § 15-7-102.

187. *Id.* at § 15-7-102.

188. *Id.* at § 15-7-102(a).

189. Mont. Code Ann. § 15-7-102(6).

190. *Id.* at § 15-1-402.

191. *Id.* at § 15-15-102.

192. *Id.* at § 15-7-102(3).

appeal is made to the County Tax Appeal Board in the county where the property is located.<sup>193</sup>

The appraisal notice is not the same as a tax bill. By the time a tax bill is received,<sup>194</sup> the statutory deadline for a formal appeal has likely passed and an appeal may not be filed until the next tax year.<sup>195</sup> In addition, taxes must be timely paid under protest for the taxpayer to receive relief on the successful completion of an appeal.<sup>196</sup>

Failure to commence a timely appeal, even when the taxes are paid under protest, will prevent a taxpayer from receiving any refund or rebate for a successful appeal.<sup>197</sup> A successful action by the taxpayer will result in a refund of the taxes paid, as well as statutory interest from the date of the payment.<sup>198</sup>

*C. Valuation of Any Property May First Be Contested Through Informal Review with the Department of Revenue*

Informal review by the Department of Revenue may be made before filing a formal appeal.<sup>199</sup> Taxpayers may request an informal review of their classification and valuations in writing, by filing an AB-26 form (Request for Informal Review) with the Department of Revenue within 30 days of receiving an appraisal notice.<sup>200</sup> This process is available to all property owners who have received a valuation or classification notice from the Department of Revenue, including ownership of mobile homes, agricultural land, or residential and commercial property.<sup>201</sup>

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193. *Id.* at § 15–2–301.

194. Each year, by August 1, the Department is required to transmit property tax records to the county treasurer of each county. Mont. Code Ann. § 15–10–202(1). Within ten days of receipt of the property tax record, the county treasurer will publish a notice in the paper to inform property owners of the responsibilities to pay property taxes. *Id.* at § 15–16–101. The county treasurer is mandated to send notice of the tax bill—the amount due and owing to the last known address of each taxpayer. *Id.* at § 15–16–101(2). The notice (separate from the assessment notice) will include the taxable value of the property, the total mill levy applied, itemized city services and special improvement district assessments collected, the number of school districts in which the property is located, and the amount to total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax. *Id.* Notice of a tax lien must also be prominently displayed. *Id.* at § 15–16–101(4). A minimum tax of \$5 will be imposed. *Id.* at § 15–16–118. Residential and commercial property owners must pay taxes to the county treasurer on or before November 30 and May 31 of each year. *Id.* at §§ 15–16–101(a)–(b), 15–16–102. Failure to timely pay will subject the property owner to imposition of penalties and interest. *Id.* at § 15–16–102. Centrally assessed properties such as electric utilities, railroad, and other multi-county properties are separate requirements not addressed in this article.

195. Mont. Code Ann. § 15–7–102(6).

196. *Id.* at § 15–1–402(2).

197. *Id.*

198. *Id.* at § 15–1–402(6)(b)(i).

199. *Id.* at § 15–7–102(3); Admin. R. Mont. 42.20.505.

200. Admin. R. Mont. 42.20.505.

201. Mont. Code Ann. § 15–7–102(3); Admin. R. Mont. 42.20.505.

Filing for an informal review<sup>202</sup> is not required for purposes of preserving the right to appeal, but often resolves valuation differences with the Department of Revenue and extends the deadline to file an appeal with the county tax appeal board.<sup>203</sup> The Department of Revenue is required to review the informal appeal and state in writing if any adjustment is made to the property valuation or classification.<sup>204</sup>

#### *D. Contesting Valuation: Formal Appeal Process*

The Montana Constitution and the legislature developed a tax appeal system that utilizes multiple layers of review in both the executive and judicial branch.<sup>205</sup> Article VIII, Section 7 of the 1972 Montana Constitution states: “The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.”<sup>206</sup> The legislature has developed a system of county tax appeal boards designated to provide the local review of property classification and valuation.<sup>207</sup> Each Montana county has a county tax appeal board, which is overseen by the State Tax Appeal Board.<sup>208</sup>

An advantage of an independent executive branch review procedure is that a taxpayer may access independent expert board review, without requiring a taxpayer to file an appeal with the judicial branch. In addition, as part of the executive branch, the tax appeal boards have a degree of flexibility and expertise not available in the more formal judicial process.

The Montana Supreme Court has recognized that assessing property and estimating market value “is by no means perfect, and will occasionally miss the mark when it comes to the Constitution’s goal of equalizing property valuation” and that, in fact, perfection in this field is “unattainable.”<sup>209</sup> For this reason, the appeal process<sup>210</sup> is critical for a fair and equitable property tax system. In Montana, the appeal process is independent from the Department of Revenue appraisal process, which creates additional pro-

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202. The AB-26 form may be found at the local appraiser’s office or on the Department’s website at <http://mt.gov/revenue/formsandresources/forms.asp#property>. The completed form is submitted to the local assessment office. Mont. Code Ann. § 15-7-102(3).

203. *Id.* at §§ 15-7-102(3), 15-7-102(6), 15-15-102.

204. *Id.* at § 15-7-102(4).

205. *Id.* at §§ 15-15-101, 15-2-301 to 15-2-303.

206. Mont. Const. art. VIII, § 7.

207. Mont. Code Ann. §§ 15-15-101 to 15-15-104.

208. *Id.* at §§ 15-15-101, 15-2-201.

209. *Albright*, 933 P.2d at 826.

210. For a brief overview of the Montana tax appeal process, see David Woodgerd, *Montana’s Tax Appeal Process: A Guide Through the Maze*, 51 Mont. L. Rev. 190 (1990).

tections in determining proper valuation for real property by providing an independent review by persons knowledgeable in appraisal and taxation.

*E. Formal Appeal for Valuation of Most Property Is Made with the County Tax Appeal Board*

If the results of the Department of Revenue's informal review are unsatisfactory or if a taxpayer elects not to file for informal review, a taxpayer may file an application for a reduction in value with the county tax appeal board in the county in which the property is located.<sup>211</sup>

Filing an application for reduction with a county tax appeal board begins the formal appeal process.<sup>212</sup> The application form<sup>213</sup> is filed in the County Clerk and Recorder's office in the county where the property is located and must be submitted on or before the first Monday in June, 30 days after receiving a classification or appraisal notice, or 30 days after receiving a decision in an informal appeal.<sup>214</sup>

*F. County Tax Appeal Board Procedure*

The county tax appeal board, a three-person lay board appointed by the county commissioners, hears property tax appeals on valuation and classification matters.<sup>215</sup>

The county tax appeal board sets a hearing date and holds a hearing on classification or valuation in the county seat of the county where the property is located.<sup>216</sup> All property tax appeals (other than certain centrally assessed properties) must go through the county tax appeal board hearing process before an appeal may be made to the State Tax Appeal Board.<sup>217</sup>

The county hearings are typically informal (though the witnesses must be sworn in to testify): a variety of evidence may be presented and a non-attorney may represent a taxpayer.<sup>218</sup> The hearings are open to the public.<sup>219</sup> The Board will generally review evidence of market value and has

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211. Mont. Code Ann. §§ 15-7-102(3), 15-7-102(6), 15-15-102.

212. *Id.* at § 15-15-102.

213. The application is available on the State Tax Appeal Board website (<http://stab.mt.gov/appeal-form.asp>), with the county tax appeal board, the county clerk and recorder, or at the local appraisal office.

214. Mont. Code Ann. § 15-15-102.

215. *Id.* at § 15-15-101.

216. *Id.* at §§ 15-15-101 to 15-15-103.

217. *Id.* at § 15-15-103.

218. *Id.*

219. The county and state boards are public bodies and Montana's constitution favors open meetings. Certain confidential material, such as RTCs and other materials, will not be considered public documents and must be protected from general release to the public. Department files (other than those deemed closed by law) are open to the public and shall be available to the public. Mont. Admin. R.



the authority to adjust the market value.<sup>220</sup> After the hearing, the county board will issue a written opinion.<sup>221</sup>

If, for any reason, the county tax appeal board fails to hear a properly filed appeal, the reduction in valuation is automatically granted.<sup>222</sup> When the county tax appeal board discovers that an appeal was not heard, the board must notify the Department of Revenue, the State Tax Appeal Board, and any municipal corporation affected by the appeal.<sup>223</sup> The Department of Revenue, or any affected municipal corporation, may appeal to the State Tax Appeal Board.<sup>224</sup>

### *G. State Tax Appeal Board as Court of Record for Tax Appeals*

Upon receipt of the county tax appeal board decision, either party has 30 days to file for review of the decision by the State Tax Appeal Board.<sup>225</sup>

The Montana State Tax Appeal Board is an independent, three-member administrative Board created by the Montana Legislature in accordance with the Montana Constitution, which requires an independent appeal process for taxpayer grievances.<sup>226</sup> The Board is a full-time board with its own staff that, among other duties, acts as an administrative adjudicatory body that hears property tax appeals.<sup>227</sup> The Board members must have certain knowledge and skills relating to taxation.<sup>228</sup>

The State Tax Appeal Board is not a quasi-judicial body as defined by the Montana Code Annotated but nonetheless performs some quasi-judicial functions and exercises its judgment and discretion in determining appeals.<sup>229</sup> The Board is, however, a court of record in tax appeal cases and

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42.2.325; see e.g. Mont. Code Ann. §§ 2–6–101 to 2–6–405; see also Mont. Const. art. II, § 9, (quoting the right to know provision: “No person shall be deprived of the right to examine documents or observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in the cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”).

220. Mont. Code Ann. §§ 15–15–101(3), 15–15–103.

221. Mont. Admin. R. 2.51.307.

222. Mont. Code Ann. § 15–15–103(2)(a).

223. *Id.* at § 15–15–103(2)(b).

224. *Id.* at §§ 15–15–103(2), 15–15–104, 15–2–301.

225. *Id.* at § 15–1–303(3).

226. Mont. Const. art. VIII, § 7 (explaining the tax appeals process: “The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.”).

227. Mont. Code Ann. § 15–2–201. The Board is additionally authorized to oversee the county tax appeal boards, hear direct appeals from the Department of Revenue on other tax matters, and to act as an appellate board in certain matters. *Id.* at §§ 15–2–201, 15–2–301, 15–2–302.

228. *Id.* at § 15–2–102(1).

229. *Id.* at § 2–15–124; *Burlington N. Inc.*, 545 P.2d at 1089. Having quasi-judicial functions involves the exercise of judgment and discretion in making determinations in controversies. *Id.* at 1088. To perform its function of affirming, reversing or modifying any decision, STAB may hold a *de novo* hearing and, in addition, may take “additional evidence, on a firsthand basis, so as to reach a fair, just

deference is given to the factual findings of the Board by Montana's district courts and the Montana Supreme Court.<sup>230</sup>

### 1. *Process for Filing a Complaint*

The appeal notice sent to the State Tax Appeal Board must specify the action complained of and the reasons assigned for the complaint.<sup>231</sup> Failure to provide such information in the initial complaint may subject the taxpayer to dismissal or an Order for a More Definite Statement.<sup>232</sup>

After completion of initial filings, the State Tax Appeal Board sets a hearing or scheduling conference depending on the complexity of the appeal.<sup>233</sup> Notice of the hearing must be made at least 15 days in advance.<sup>234</sup> For an individual property tax appeal on a residential property, the Board traditionally sets a hearing schedule with a hearing designated for a few hours.<sup>235</sup> For a more extensive appeal, the Board generally will hold a scheduling conference to set a hearing date.<sup>236</sup> After a hearing date has been set, the parties in a larger appeal usually provide the Board with a joint scheduling plan, which includes a discovery and briefing schedule.<sup>237</sup> Hearings that are scheduled for more than three days typically require pre-hearing briefings.<sup>238</sup> The hearing location may be set in Helena or in the county seat of the county in which the property is located.<sup>239</sup>

Interlocutory appeal is only available to the parties within 30 days of the filing of an answer to an appeal, unless the parties agree to jointly file for interlocutory appeal prior to arguments before the State Board.<sup>240</sup>

Although the Board has the authority to review the appeal on the record, the Board generally holds a new hearing in the matter.<sup>241</sup> The State Tax Appeal Board is not bound by "common law and statutory rules of evidence or rules of discovery" from property tax appeals previously heard by a county board and generally accepts the county tax appeal board file, including transcripts and other materials in their entirety as part of the State

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and equitable holding." *Id.* at 1090 (holding that STAB has the authority to receive, during a hearing, testimony and evidence not presented to the Department during the tax assessment proceeding).

230. *Mont. Dept. of Rev. v. P.P.L. Mont., LLC*, 172 P.3d 1241, 1249 (Mont. 2007).

231. Mont. Code Ann. § 15-2-301(1).

232. Mont. R. Civ. P. 12(b)(6), 12(e) (2007).

233. Mont. Code Ann. § 15-2-301. *See also* STAB rules at [www.mt.gov/stab](http://www.mt.gov/stab) (last accessed Jan. 2009).

234. Mont. Code Ann. § 15-2-301(1).

235. *See* STAB rules at [www.mt.gov/stab](http://www.mt.gov/stab) (last accessed Jan. 2009).

236. *Id.*

237. *Id.*

238. *Id.*

239. Mont. Code Ann. § 15-2-301(1).

240. *Id.* at § 15-2-304.

241. *Id.* at § 15-2-301(2).

Tax Appeal Board record in the matter.<sup>242</sup> The State Tax Appeal Board hearing is recorded, evidence is taken, and standard rules of procedure are used.

## 2. *Who May Appear Before the State Tax Appeal Board*

A taxpayer will generally appear *pro se* or have counsel to appear before the State Tax Appeal Board. There is some question about whether a non-attorney representative may appear before the State Board. Although the Taxpayer's Bill of Rights<sup>243</sup> allows for a taxpayer to have a representative of his or her choice, Montana law requires that a corporate taxpayer be represented by counsel in district court.<sup>244</sup> There is also an indication that the Supreme Court will require a corporation to be represented by counsel in an administrative hearing.<sup>245</sup>

## 3. *Standard of Review*

By statute, the State Tax Appeal Board may affirm, modify, or reverse the ruling of a county tax appeal board.<sup>246</sup> It is the State Board's duty to find the facts and to arrive at a proper taxable value.<sup>247</sup> As part of that duty, the Board has the authority to determine appeals from the Department and determine appeals relating to appraisals.<sup>248</sup>

In challenging the valuation of property, there is a presumption that the Department's appraisal is correct, but the Department bears a certain burden of providing documented evidence to support its assessed values.<sup>249</sup> Generally, the same burden of proof is used for classification issues.<sup>250</sup> When interpreting a statute, the Court is supposed to give great deference to the interpretation given by the agency charged with its administration.<sup>251</sup> If there is any question of interpretation, tax statutes are to be strictly construed against the taxing authority and in favor of the taxpayer.<sup>252</sup>

242. *Id.* at § 15-2-301(4).

243. *Id.* at § 15-1-211.

244. *See e.g. Audit Serv. v. Frontier W.*, 827 P.2d 1242, 1246 (Mont. 1992).

245. *See e.g. Steele v. MacGregor*, 956 P.2d 1364 (Mont. 1998). For more discussion, *see* Karen Powell, *Who Can Appear Before Tax Appeal Boards*, Line Items (1st Q. Mont. CPA 2008) (available at [www.stab.mt.gov](http://www.stab.mt.gov) in the reference section). On file with the *Montana Law Review*.

246. Mont. Code Ann. § 15-2-301. STAB does not have the power to remand a matter to the Department of Revenue. *Countryside Vill.*, 667 P.2d at 942 (Morrison, J., dissenting).

247. Mont. Code Ann. § 15-2-201(d); *see also Mont. Dept. of Rev. v. Paxon*, 666 P.2d 768, 768-769 (Mont. 1983); *Grouse Mtn. Dev.*, 707 P.2d at 1114-1115.

248. *St. Tax App. Bd.*, 613 P.2d at 694.

249. *DeVoe*, 866 P.2d 228.

250. *Farmers Union C. Exch., Inc. v. Mont. Dept. of Rev.*, 901 P.2d 561, 563 (Mont. 1995).

251. *Mont. Dept. of Rev. v. Puget Sound Power & Light Co.*, 587 P.2d 1282, 1286 (Mont. 1978).

252. *W. Energy Co. v. Mont. Dept. of Rev.*, 990 P.2d 767 (Mont. 1999).

When considering market value, the county and state tax appeal boards must consider the theory and figures offered by the taxpayer and give an indication why the Boards did not adopt those figures.<sup>253</sup>

#### 4. *Information Used in Appeal Process*

Statutory and Montana Constitutional provisions dictate that information filed in either an administrative appeal process or a district court shall be deemed public, unless otherwise protected by law.<sup>254</sup>

When a taxpayer appeals a property's valuation to the county or state tax appeal board, the Department of Revenue usually presents a set of standard materials used in valuing the property.<sup>255</sup> All properties have a property record card (a public document) created and maintained by the Department of Revenue which shows the location, legal description, and general attributes of the property, as well as the appraised value of the property.<sup>256</sup> For all property that has been valued utilizing the comparable sales method, the Department of Revenue has all comparable sales data used for valuing the subject property.<sup>257</sup> For cost-based valuations, the Department of Revenue uses standard cost valuation materials.<sup>258</sup>

All material is available to a taxpayer for purposes of appealing a valuation, but not all material may be available to the general public.<sup>259</sup> A taxpayer may be subject to confidentiality requirements in order to access confidential comparable sales data such as realty transfer certificates (RTCs). RTCs indicate sales information including location and sales price and are considered confidential under Montana law.<sup>260</sup> The Montana Supreme Court has stated, however, that during an appeal, a taxpayer has the right to review all material used in valuation of his or her property.<sup>261</sup> The Montana

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253. *Paxon*, 666 P.2d at 770; *DeVoe*, 759 P.2d at 993.

254. Department files (other than those deemed closed by law) are open and available to the public. Admin. R. Mont. 42.2.325. See e.g. Mont. Code Ann. §§ 2-6-101 to 2-6-405. See also Mont. Const. art. II, § 9 (quoting the right to know provision: "No person shall be deprived of the right to examine documents or observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in the cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.").

255. Because the Department uses a computer-assisted mass appraisal system, the Department generally uses those materials during the hearing process.

256. Mont. Code Ann. § 15-8-701 (requiring the Department of Revenue to keep a property tax record, with certain information, for all properties).

257. Admin. R. Mont. 42.20.432; *Albright*, 933 P.2d at 817-818.

258. *Albright*, 933 P.2d at 817-818.

259. For an expanded discussion, see *supra* n. 219.

260. Mont. Code Ann. § 15-7-307; Admin. R. Mont. 42.20.201, 42.20.203. See also *DeVoe*, 759 P.2d at 995.

261. *DeVoe*, 759 P.2d at 995. See also *O'Neill*, 739 P.2d 456, 461 (Mont. 1987).

Supreme Court, in *O'Neill v. Montana Department of Revenue*, discussed RTCs:

In analyzing Section 15–7–308, MCA, we note that the language protects the confidentiality of RTCs when the demand for individual privacy exceeds the merits of public disclosure. However, we must draw a distinction between *public* disclosure and *limited* disclosure to the taxpayer party, tax boards, and reviewing courts in contested proceedings. When limited disclosure of relevant RTC information is crucial to a fair and informed decision by a tax appeal board or court, such disclosure outweighs individual privacy. Therefore, in contested tax proceedings, we hold that relevant information from the RTCs shall be disclosed to the taxpayer party, tax boards, and reviewing courts. During the pendency of the proceedings, the RTC information shall not be available to the public.<sup>262</sup>

Thus, the Department of Revenue must make the RTCs used in valuing a property available to the taxpayer during an appeal.<sup>263</sup>

Although provided to the taxpayer, tax boards, and reviewing courts during contested tax proceedings, RTC information is not available to the public. At the conclusion of the contested proceeding, any portion of the record which contains RTC information must be sealed and made unavailable for public inspection. The Court in *O'Neill* has said that this “limited and transient disclosure of RTC information conforms to the confidentiality requirements of Section 15–7–308, MCA, while providing the benefits of substantive due process to the taxpayer in a contested case.”<sup>264</sup>

A taxpayer may apply to the district court for a subpoena to compel the Department of Revenue to release relevant RTC information upon which the Department of Revenue based its comparable sales data. The subpoena must identify the specific information requested by the taxpayer with as much precision as possible. The issuance and scope of the subpoena lies within the discretion of the district court. Any abuse of the subpoena process, or overbroad requests for RTC information, may be prevented by a protective order from the Montana State Tax Appeal Board or the district court.<sup>265</sup>

## VIII. APPEALING A STATE TAX APPEAL BOARD DECISION

### A. District Court and Supreme Court Appeal

Montana does not have a judicial appellate tax tribunal.<sup>266</sup> Instead, a tax matter may be appealed to the district court and the Montana Supreme

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<sup>262.</sup> *O'Neill*, 739 P.2d at 461 (emphasis in original).

<sup>263.</sup> *Id.* at 456.

<sup>264.</sup> *Id.* at 461.

<sup>265.</sup> *Id.*

<sup>266.</sup> Mont. Const. art. VIII, § 7; Mont. Code Ann. § 15–2–303. *See generally* Mont. Const. art. VII.

Court.<sup>267</sup> The district court, as a reviewing court, may reverse or modify the decisions of the State Tax Appeal Board. The court may also remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record, or are arbitrary, capricious or characterized by an abuse of discretion.<sup>268</sup>

The Montana Supreme Court, however, has repeatedly stated that it is not a judicial function to act as an authority on taxation matters. Tax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property, and the judiciary cannot properly interfere with that function.<sup>269</sup> Absent clear error, the district court and Montana Supreme Court will give deference to the factual findings of the State Tax Appeal Board.<sup>270</sup> Although the district court has the authority to accept additional evidence in a tax appeal, the court is generally limited in its review.<sup>271</sup> The district court and Supreme Court will review conclusions of law to determine whether those conclusions are correct.<sup>272</sup>

Montana State Tax Appeal Board decisions may be appealed to the district court within 60 days after service of the final decision.<sup>273</sup> The taxpayer may file in the district court for Lewis and Clark County, in the county where the taxpayer resides, or in which the taxpayer's principal office or place of business is located.<sup>274</sup> A district court decision may be appealed to the Montana Supreme Court within 30 days of the entry of judgment.<sup>275</sup>

### *B. Remedies Outside Tax Appeal Boards: Declaratory Judgment and Other Interlocutory Actions*

A party to a tax appeal has a limited opportunity to circumvent a tax appeal board. Generally, a party may not file with the district court before the case has been presented to the State Tax Appeal Board.<sup>276</sup> For example,

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267. Mont. Code Ann. § 15–2–303.

268. *Id.* at § 2–4–704; *DeVoe*, 759 P.2d at 995. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced “because findings of fact, upon issues essential to the decision, were not made although requested.” Mont. Code Ann. § 2–4–704(2)(g).

269. *NW Land v. St. Tax App. Bd.*, 661 P.2d 44, 47 (Mont. 1983); *Larson v. Mont.*, 534 P.2d 854, 858 (Mont. 1975); *Blair v. Potter*, 315 P.2d 177, 180 (Mont. 1957); *DeVoe*, 759 P.2d at 995; *PPL Mont., LLC*, 172 P.3d at 1249 (quoting *Grouse Mt. Dev.*, 707 P.2d at 115).

270. *PPL Mont., LLC*, 172 P.3d at 1249 (quoting *Grouse Mt. Dev.*, 707 P.2d at 115).

271. *See e.g. Paxon*, 666 P.2d at 770.

272. *PPL Mont., LLC*, 172 P.3d at 1245.

273. Mont. Code Ann. § 15–2–303.

274. *Id.* at § 15–30–148.

275. Mont. R. Civ. P. 4(5)(a)(i).

276. *See e.g. Mont. Code Ann. §§ 15–2–303, 15–2–304.*

interlocutory appeal is only available within the first 30 days after an answer is filed with the State Tax Appeal Board, or when jointly filed by the parties before oral arguments have been heard by the board.<sup>277</sup> Alternatively, a declaratory judgment action may be brought in the district court relating to rules, methods, assessment procedures, or unlawful taxation within 90 days of the date of the notice of the tax due.<sup>278</sup> Taxes should still be paid under protest. If a taxpayer is successful, a court may not refund taxes paid without protest and if the taxpayer is unsuccessful, penalties and interest will accrue from the due date.<sup>279</sup> Further, a court cannot declare taxes not yet imposed as unlawful, thus a taxpayer must pay a tax when due and subsequently challenge the propriety of its imposition.<sup>280</sup> Class action litigation is also available pursuant to Montana Code Annotated Section 15-1-407.<sup>281</sup>

#### IX. ADDITIONAL LEGAL DETERMINATIONS RELATING TO REAPPRAISAL AND VALUATION: MONTANA'S REQUIREMENT TO EQUALIZE VALUES

The Montana Supreme Court has repeatedly addressed the validity of the Department of Revenue's appraisal practice since the implementation of the 1972 Constitution.<sup>282</sup> While the Supreme Court has granted the Department of Revenue a fair amount of latitude to design and implement a variety of appraisal practices, the Court has repeatedly looked to the Constitution to prevent inequitable tax practices from leading to disproportionate tax burdens. Specifically, the Court has cited to uniformity, equal protection, and due process requirements.<sup>283</sup> In examining reappraisal issues, the Court has addressed both the specifics of appraisal values as well as overarching equity issues.<sup>284</sup>

The Montana Constitution provides that the state shall appraise, assess, and equalize the valuation of all property which is to be taxed in a manner provided by law.<sup>285</sup> While the reappraisal cycle is generally driven by stat-

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277. *Id.* at § 15-2-304.

278. *Id.* at § 15-1-406.

279. *Petrs. I-549 v. Missoula Irrigation Dist.*, 111 P.3d 664, 671 (Mont. 2005); *see also* Mont. Code Ann. § 15-16-101.

280. *Jefferson v. Big Horn Co.*, 4 P.3d 26, 31 (Mont. 2000).

281. *Larson*, 534 P.2d at 855.

282. *See generally Patterson*, 557 P.2d 798; *Barron*, 799 P.2d 533; *Roosevelt*, 975 P.2d 295; *Larson*, 534 P.2d 854; *St. Tax App. Bd.*, 613 P.2d 691; *DeVoe*, 759 P.2d 991.

283. *See e.g. St. Tax App. Bd.*, 613 P.2d at 693; *DeVoe*, 759 P.2d at 993; *see generally Albright*, 933 P.2d 815, *Barron*, 799 P.2d 533.

284. *See generally St. Tax App. Bd.*, 613 P.2d 691; *Hanley v. Mont. Dept. of Rev.*, 673 P.2d 1257, 1258 (Mont. 1983); *Larson*, 534 P.2d at 854; *DeVoe*, 759 P.2d 991.

285. Mont. Const. art. VIII, § 3.

ute and rule, the Montana Supreme Court has consistently directed that appraisal and reappraisal cycles must be equitable across the state.<sup>286</sup>

The Montana Supreme Court had addressed the equity issue in several cases other than the *Albright* and *Barron* cases discussed previously. For example, in *Hanley v. Montana Department of Revenue*, there was a question of which cost manuals applied the appropriate cost basis valuation for the 1978-1985 valuation cycle.<sup>287</sup> The Supreme Court ruled that the Department has the power to equalize property values and thus adjust values as necessary.<sup>288</sup>

In addition, there must be equality in the methodologies used across the state.<sup>289</sup> The requirement for equalization, as well as its historical framework, is discussed at length by the Court in *Albright*. This class action lawsuit regarding the reappraisal cycle ending in 1992 challenged the Department's use of multiple valuation methodologies during reappraisal. The Supreme Court, in analyzing the constitutional requirement for equity and the related transcripts from the Constitutional Convention determined that the "state could utilize a number of different approaches" to appraise, assess, and equalize value as required by the Montana Constitution.<sup>290</sup>

In *Larson v. Montana Department of Revenue*, Larson argued that a disproportionate tax burden was placed on Lewis and Clark County taxpayers through the 1974 county appraisal and the lack of a statewide appraisal plan.<sup>291</sup> The Court agreed that there was a disproportionate tax impact which violated both the U.S. and Montana Constitutions.<sup>292</sup> When looking at the specifics of a property valuation, the Montana Supreme Court set forth overarching directives to ensure equitable market value taxation. When there is a conflict between setting a true value for taxpayer property and the uniformity and equality in taxation as required under Montana law, the Supreme Court has held that uniformity and equality is preferred as the "just and ultimate purpose of the law."<sup>293</sup> Therefore, the Court held that unequal appraisals may be reduced even though the appraisals were at true market value.<sup>294</sup> Reduction is required where it is shown that under the

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286. *Barron*, 799 P.2d at 538–540 (addressing multiple state and federal constitutional concerns with sales assessment ratios).

287. *Hanley*, 673 P.2d at 1258.

288. *Id.*; see also *Barron*, 799 P.2d at 534.

289. *Hanley*, 673 P.2d at 1260–1261.

290. *Albright*, 933 P.2d at 825.

291. *Larson*, 534 P.2d at 856.

292. *Id.* at 858 (ruling that the equal protection and due process protections of the Montana Constitution had been violated, and that it need not reach analysis of the U.S. Constitution).

293. *St. Tax App. Bd.*, 613 P.2d at 694 (quoting *Sioux City Bridge v. Dakota Co.*, 260 U.S. 441, 446 (1923)).

294. *Id.*



system as applied, it is impossible to meet both the true value and the equality standards.<sup>295</sup>

This standard cannot be reached in the hypothetical, by possibility, or even by probability. The taxpayer must bring evidence of inequality. The Montana Supreme Court has consistently stated that to obtain relief upon the ground that a taxpayer's property is assessed inequitably, it is essential for a taxpayer to show, at least: (1) there are several other properties within a reasonable area similar and comparable to the subject property; (2) the amounts of assessments on these properties; (3) the actual values of the comparable properties; (4) the actual value of the taxpayer's property; (5) the assessment complained of; and (6) that by a comparison the taxpayer's property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and actual valuations of the similar and comparable properties, thus creating discriminations.<sup>296</sup> Those criteria, based on Iowa law, shall at least be a "starting place" for actual comparison of true value to assessed-value ratio.<sup>297</sup>

For example, in discussing whether the criteria have been met, the Court in *DeVoe v. Montana Department of Revenue* examined the valuation of Missoula commercial apartment complex properties in 1988, remanded the matter to the tax appeal boards, and directed the tax appeal boards to consider a variety of market evidence including the taxpayer's appraisal.<sup>298</sup>

In discussing individual appraisals at market value in comparison to overarching fairness issues, the Montana Supreme Court has supported the concept stated by the United States Supreme Court in *Sioux City Bridge v. Dakota Company* that "where it is impossible to secure both the standard of the true value of a taxpayer's property and the uniformity and equality in taxation required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."<sup>299</sup> Thus, the Court has directed that unequal appraisals may be reduced even though they result in an assessment below true market value or 100% of market value as required by Montana Code Annotated Section 15-8-111.<sup>300</sup>

295. *Id.*

296. *Id.* at 694-695; followed in *DeVoe*, 759 P.2d at 991.

297. This discussion in *Mont. Dept. of Rev. v. St. Tax App. Bd.* directed that the ratio system may be utilized if sufficient materials are presented by the Department and the taxpayer. See also *DeVoe*, 759 P.2d at 994.

298. *DeVoe*, 759 P.2d at 994.

299. *St. Tax App. Bd.*, 613 P.2d at 694 (quoting *Sioux City Bridge*, 260 U.S. at 446).

300. Mont. Code Ann. § 15-8-111.

## X. CONCLUSION: MITIGATION POSSIBILITIES

There are distinct drawbacks to a long reappraisal cycle. A shorter reappraisal cycle would benefit the property tax system, the taxpayer, and the courts.

### A. *Taxpayers Would Be Better Served with a Shorter Reappraisal Cycle*

A long appraisal cycle (six years) dramatically increases the likelihood that there will be substantial changes in property values with each cycle. This can be problematic and result in major multi-year litigation that may affect the entire reappraisal process. Shortening the cycle would provide taxpayers, legislators, and courts with less dramatic changes.

The long appraisal cycle has resulted in the legislature's adoption of a variety of measures to mitigate the tax impacts of the valuation shifts.<sup>301</sup> As a consequence, the current system lacks transparency. The property tax calculations are complex and difficult for taxpayers to understand without considerable help.<sup>302</sup>

Another consequence of this complex system is that it does not provide for taxation at market value at any time during the appraisal cycle. The market value is set at the beginning of a six-year cycle but the valuation phase-in is at its lowest.<sup>303</sup> By the end of the cycle, the valuation phase-in is completed but the homestead/comstead exemption is then at its highest.<sup>304</sup> At no time during that cycle does a taxpayer pay taxes on a current market value.<sup>305</sup>

The six-year cycle also affords taxpayers a limited opportunity to appeal property tax valuation increases.<sup>306</sup> Any property owner may contest the valuation placed on property through both an informal and a formal appeal process, but a taxpayer is limited to appealing through the formal

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301. As discussed previously, the legislature has implemented tax mitigation strategies for Montanans who have been extraordinarily affected by property value increases, low-income seniors, veterans, and low-income homeowners. *Id.* at §§ 15-6-193, 15-30-171 to 15-30-179, 15-6-211, 15-6-134.

302. In the author's experience overseeing property tax appeals, few members of the public understand the property tax system. In addition, the calculations are generally complex and misunderstood by the public.

303. Mont. Code Ann. §§ 15-6-134, 15-7-111. Property value for tax purposes is set at the beginning of the reappraisal cycle and then phased in over the six-year period. Thus, the percentage change in taxable value is 16.66% per year. The total tax on the value of the property is not paid until six years after the assessment date. *Id.* at § 15-7-111(3).

304. The homestead and comstead exemptions set forth by the legislature increase slightly for tax years beginning in 2005. *Id.* at § 15-6-222. Thus, the homestead exemption is at its highest rate at the end of the current reappraisal cycle. *Id.* at § 15-6-222(1).

305. Between the phase-in tax plan in Mont. Code Ann. § 15-7-111 and the homestead exemption in Mont. Code Ann. § 15-6-222, taxes are not paid on the full market value of a residential property.

306. Mont. Code Ann. § 15-7-111; Admin R. Mont. 42.18.107.

process only once during a reappraisal cycle unless there is a significant change to the property, such as an ownership change, a change in classification, an addition to or destruction of improvements, or other significant changes to the property.<sup>307</sup>

The unique six-year Montana property tax appraisal cycle for residential, commercial, and forestland property (classes three, four, and ten) may fail to accurately assess valuation in an unstable market situation. Because some property is valued just one time in six years, while other property is re-valued upon sale or other changes, inequities in tax valuation may occur when there is a volatile market and a relatively long appraisal cycle.

### *B. Simplification of the Property Tax System Would Ease Burdens of Implementation of the Property Tax*

Simplifying the reappraisal system by shortening the cycle and simplifying the property tax would be beneficial for the taxpayer, the tax administrators, and the court system.

Simple tax systems are the least expensive to implement and the easiest for taxpayers to understand. Currently, the Montana property tax system is complex. The majority of taxpayers are unfamiliar with homestead exemptions, phase-ins, tax rates, and property tax mitigation strategies.<sup>308</sup> A shorter reappraisal cycle would make it possible to simplify the homestead exemption, could eliminate the valuation phase-in, and set a single tax rate for the entire cycle. Eliminating these elements would allow for a more transparent property tax calculation.

While the reappraisal cycle should be reviewed for purposes of administrative simplicity, it would also assist the court system to have a simplified tax system. Currently, the tax appeal system provides for a county and state tax-specific review system. The general-jurisdiction courts, however, have been required to analyze the tax system during reappraisal cycles.<sup>309</sup> Because of the implementation of a reappraisal system across Montana, the challenges have been very large, time-consuming, and costly to the taxpayer.

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307. Admin. R. Mont. 2.51.307.

308. When the legislature implements mitigation strategies for property tax, it makes the system complex for an individual to understand. For example, property values are set at market value (Mont. Code Ann. § 15-8-111), but the taxable value does not include homestead exemptions (Mont. Code Ann. § 15-7-222), and the taxable value is phased in over six years (Mont. Code Ann. § 15-7-111(3)). That taxable value is then applied to the mill levies as set by the counties and includes any additional assessments or fees. *Id.* at § 15-10-305. Thus, there is no standard method to calculate an individual's property taxes by knowing the market value of the property. There is also convoluted law regarding the legislature's attempts to override the 1986 I-105 citizen initiative to limit property taxes. Douglas Young, *Montana Property Taxes since I-105*, Mont. Bus. Q. (Dec. 22, 1994).

309. See e.g. *Barron*, 799 P.2d 533; *St. Tax App. Bd.*, 613 P.2d 691; *Roosevelt*, 975 P.2d 295; *Larson*, 534 P.2d 854.

ers, the government, and the judicial system. The methodologies for reappraisal are complex. A shorter cycle, with less valuation change, would likely prevent a heavy load of large-scale litigation once every six years. With a shorter cycle, tax litigation would not be concentrated at the beginning of a long reappraisal cycle.

It should be noted, however, that the Department of Revenue does not currently have adequate resources to appraise all parcels of real property on an annual or biennial basis under current law. Additional resources would likely be required before annual appraisal is possible.<sup>310</sup>

### C. Summary

The current statewide property tax system, developed over the past 25 years, has settled to a workable system. Although initial reappraisal cycles caused inconsistencies across the state, the Montana Supreme Court has set forth workable models that address both specific valuation standards and equity issues for state-wide reappraisal. The property tax system, however, would benefit by simplifying the tax calculation procedure as well as shortening the reappraisal cycle. Doing so would eliminate potential issues with high valuation increases at the beginning of a long tax cycle, flatten values at the end of the taxation cycle, and provide increased transparency in the system and its calculations.

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310. Other jurisdictions use assessment ratios for annual valuation. As discussed in this article, the Montana Supreme Court disallowed the Department of Revenue's attempts to develop a stratified sales assessment ratio. See e.g. *Barron*, 799 P.2d 533.

